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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,111	07/10/2003	Vincent Edward Norment		1858

7590 06/16/2004

Vincent E. Norment  
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EXAMINER

MORAN, KATHERINE M

ART UNIT PAPER NUMBER

3765

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/616,111

Applicant(s)

NORMENT, VINCENT EDWARD

Examiner

Katherine M Moran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because the drawings of Figures 5b,c, 6b,c, 7b,c 8a,b, 9, and 10 appear to be a photocopy of the claimed invention. 37 CFR 1.84 requires that the drawings be of India ink or its equivalent to ensure solid black lines.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claims 1, 3, and 4 contain the trademark/trade name D-BAND. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves.

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Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe an absorbent headband and, accordingly, the identification/description is indefinite.

4. Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. The claims refer to structures as shown in the Figures, but the claims themselves do not outline the particular structure of the invention.

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***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Eisenberg (U.S. 6,108,818). Eisenberg '818 discloses the invention as claimed. Eisenberg teaches an absorbent headband which inherently blocks a certain percentage of the sun's ultra violet rays when worn on the forehead.

1. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (CA 2,121,271). Smith discloses the invention as claimed. Smith teaches a headband 1 with crown bands 3-5 including novelty items 4.4,4.5 on the headband's surface.

*Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg '818 in view of Checkeroski (U.S. 5,386,592). Eisenberg discloses the invention substantially as claimed. However, Eisenberg does not teach an absorbent headband with extra absorbent bands coming from the top and attaching to the first headband. Checkeroski teaches a headband configuration with a first band 36 and second bands 34 extending over the top of the wearer's head. This configuration provides a more secure and stable headband assembly which remains in position. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the headband of Eisenberg with the extra bands as taught by Checkeroski to serve as reinforcing components to the first headband.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eisenberg in view of McConville (U.S. 5,826,277). Eisenberg discloses the invention substantially as claimed. However, Eisenberg does not teach a sweatband with logos or other indicia. McConville teaches an absorbent headband 12 with indicia or other design (col.4, lines 4-6). It is known in the art to provide head-worn gear with indicia, thus providing a "walking billboard". Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Eisenberg's headband with indicia or other designs as taught by McConville, for promotional purposes, or to display one's sports or other allegiances.

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### **PREFERRED FORMAT**

The following is a preferred format for a response to this Office Action (this would also help in making sure the response is matched to the proper application):

#### **THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:	Art Unit: 3765
[applicant's name]	Examiner: Katherine Moran
Serial No. [ # ]	
Filed: [applicant's	
filing date]	
For: [title of the invention]	

#### **RESPONSE**

Honorable Commissioner of Patents and Trademarks	Date:[applicant's mailing date]
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Washington, DC 20231

Sir:

In response to the Office Action of [date mailed by Examiner], please amend the above application as follows:

#### **IN THE SPECIFICATION:**

As required by 37 CFR 1.121, Applicant should identify the location to delete, replace, or add a paragraph. Any replacement or added paragraphs should be in clean form, that is, without markings to indicate the changes that have been made, and also include another version of the replacement paragraph on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of the paragraph. The changes may be shown by brackets (for deleted matter) or underlining (for added matter). A marked up version does not have to be supplied for an added paragraph or a deleted paragraph as it is sufficient to state that a particular paragraph has been added, or deleted. If Applicant chooses to submit a substitute

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specification, this should include an instruction to replace the specification including a signed and dated statement that the substitute specification does not include any new matter. Applicant should also include the substitute specification and a marked-up copy of the substitute specification which shows all changes relative to the previous version of the specification. The changes may be shown by brackets (for deleted matter), or underlining (for added matter).

**IN THE CLAIMS:**

As required by 37 CFR 1.121, amendments to a claim must be made by rewriting the claim with all changes (e.g., additions, deletions, modifications) included. A rewritten or newly added claim must be in clean form, without markings to indicate the changes that have been made. A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added (e.g. "amended", "twice amended", or "new"). If a claim is amended by rewriting the claim with the same number, the amendment must be accompanied by another version of the rewritten claim, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of that claim.

**IN THE ABSTRACT:**

Applicant should follow the instructions given above for specification amendments. If the abstract was noted as missing, applicant is asked to place the Abstract on a separate sheet of paper (as required by MPEP § 608.01(b)). This would avoid a lengthy Examiner's Amendment to do so when and if this application is passed to issue.

**REMARKS:**

In this section Applicant should explain (in general) what changes were made to the application (Specification, Abstract, Drawings, etc.) and should point out any disagreements with

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the Examiner's findings. Applicant should also discuss the references applied against the claims, explaining how claims might avoid the references or distinguish from them.

The amendment should then be signed by Applicant and dated.

### **CERTIFICATE OF MAILING**

Following is a suggested format for the certificate of mailing under 37 CFR 1.8© which should be included with all correspondence.

"I hereby certify that this correspondence is being deposited with the United States Postal

Service as first class mail in an envelope addressed to: Commissioner of Patents and

Trademarks, Washington, D.C. 20231, on \_\_\_\_\_"

Name of applicant, assignee, or Registered Representative

\_\_\_\_\_  
Signature \_\_\_\_\_

Date \_\_\_\_\_

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Huntington (U.S. 2,051,714), Lazarus (U.S. 2,428,937), Lesley (U.S. 4,517,685), and Yung (US 2002/0112273) teach relevant prior art.

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed.

Applicant is advised to secure the services of a registered patent attorney or agent to prosecute



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the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (703) 305-0452. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (703) 305-1025. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

May 14, 2004

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A handwritten signature in black ink, appearing to read 'K Moran', with a long horizontal flourish extending to the right.

Katherine Moran

Primary Examiner, AU 3765